IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

OP.No. 27047 of 2000(T)

PETITIONER:

P.K. MUMTAZ,
RAJASTHAN EMPORIUM,
EDAVILANGU.P.O.,
KODUNGALLUR.

BY ADV. SMT.S.K.DEVI.

RESPONDENTS:
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1. **THE ADDL. SALES TAX OFFICER,**
   DEPT. OF COMMERCIAL TAXES,
   KODUNGALLUR.

2. **THE APPELLATE ASST. COMMISSIONER**
   OF COMMERCIAL TAXES, TRICHUR-1.

3. **STATE OF KERALA,**
   REPRESENTED BY ITS
   FINANCE SECRETARY,
   SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. MATHEW GEORGE VADAKKEL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007,THE COURT ON 27/07/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 45386/2000 IN O.P. NO. 27047/2000

DISMISSED

27/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ASSESSMENT ORDER NO. A3362 (B)/99/96-97 DTD. 07/06/99 ISSUED BY R.1.

EXT.P.2: COPY OF THE ASSESSMENT ORDER NO. A 3362 (B)/99/97-98 DT. 07/06/99 ISSUED BY R.1.

EXT.P.3: COPY OF THE APPELLATE ORDER NOS. STA II 422, 423/99 DTD. 11/10/99 ISSUED BY R.2.

EXT.P.4: COPY OF THE NOTICE NO. 25172771/96-97 DTD. 20/09/2000.

EXT.P.5: COPY OF THE ASSESSMENT ORDER NO. 25172771/96-97 DTD. 10/08/2000 ISSUED BY THE R.1.

EXT.P.6: COPY OF THE ASSESSMENT ORDER NO. 25172771/97-98 DTD. 14/08/2000 ISSUED BY R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 27047 of 2000-T

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Dated this the 27th day of July, 2007.

JUDGMENT

"CR"

The issue arising for decision is as to whether bed sheets are goods exempted under Section 9 of the Kerala General Sales Tax Act, 1963, hereinafter referred to as the "KGST Act", for short, before 31-12-1999.

2. Exts.P1 and P2 assessment orders for the assessment years 1996-97 and 1997-98 were issued to the petitioner, an assessee borne on the rolls of the first respondent, overruling her contention that the goods dealt with by the assessee, a merchant in bed sheets, are "cloth woven on powerloom" and are exempted from tax by virtue of Entry 10 in the Third Schedule to the KGST Act read with Section 9 thereof. The view taken in Exts.P1 and P2 is that

bed sheets that are purchased and sold by the petitioner are not merely powerloom cloth, but bed sheets sold as 'singles' and 'doubles'.

3. By Ext.P3 appellate order, the assessment orders were set aside and case remitted, to provide an opportunity for the assessee to prove the claim that the goods are exempted. The remit was to re-examine and arrive at a fair finding whether the item is taxable, because the assessee had produced, before the appellate authority, a certificate from the supplying manufacturer that the goods are manufactured on powerloom. The assessing authority was directed by the appellate authority to verify the purchase bills and certificate and other relevant evidence and re-examine the issue and complete the assessment afresh according to law.

4. Ext.P4 notice was, thereafter, issued by the assessing authority taking the view that “bed sheets” form

an entity separate from “powerloom cloth”, in the light of what is stated in that notice. Following that, Exts.P5 and P6 assessment orders were issued overruling the contentions of the assessee.

5. Instead of availing the statutory appellate remedy, the petitioner filed this writ petition and the collection of amounts due under Exts.P5 and P6 stands stayed as per interim orders on C.M.P.No.45386/2000.

6. In support of the writ petition, it is argued, firstly, that the inclusion of “bed sheets” in Entry 108 in the First Schedule to the KGST Act as on 31-12-1999 is itself a clear indication to support the view that before such amendment was brought to the KGST Act, the bed sheets were not treated differently, if they were cloth woven on power loom and therefore, the assessee was entitled to exemption for the relevant assessment years in terms of Entry 10 in the Third Schedule. Secondly, it is argued that

the “cloth woven on powerloom” does not get transformed into any other form of goods merely by selling them as bed sheets. In support, reliance was placed by the learned counsel for the petitioner on the decision of the Orissa High Court in **Radhika v. State of Orissa**, (1977) 39 STC 93. The decision of the Calcutta High Court in **Delhi Cloth and General Mills Co. Ltd. v. Commercial Tax Officer**, (1975) 36 STC 575 was also relied on, apart from the decisions of this Court in **Radha's Fancy Piece Goods Merchants v. State of Kerala**, (1981) 48 STC 361 and **Deputy Commissioner of Sales Tax (Law) v. M.M.Mohammed Abdul Khader**, (1980) 46 STC 512.

7. Per contra, the learned Government Pleader relied on the decision of the Apex Court in **Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan**, (1980) 46 STC 256 to the effect that the words or expressions must be construed in the sense in which they are understood in the

trade, by the dealer and the consumer and argued that it is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted.

8. In **Radhika's** case (supra), the Division Bench of the Orissa High Court was dealing with the question whether Entry 33 of the Schedule that arose for decision provides exemption of the goods of the assessee in that case. The entry dealt with was as follows:

> "All mill-made fabrics made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including processed fabrics, made in the processing mills."

The Bench agreed with the contention of the standing counsel for the department that if mill-made cloth is converted into different items of goods, the exemption

would not extend to such goods, but held that so far as bed sheets are concerned, mill-made cloth is cut into pieces and the two ends are said to be stitched and that, therefore, there is indeed no conversion and bed sheets continue still to be mill-made cloth. Similar view was adopted for towels etc. and it was laid down that though, for the purpose of use, a new commodity comes into existence, there is no substantial alteration and it does not cease to be mill-made cloth. It was held that there was no basis for holding that the commodity does not continue to be mill-made cloth in its new shape. The Bench, however, confirmed the view of the Tribunal that in so far as pillow covers are concerned, the making of those items results in a change of substantial nature. The Bench also agreed with the view of the learned single Judge in **Delhi C. & G. Mills Co. Ltd**. [(1975) 36 STC 575] (supra), where the question for consideration was whether “bed sheets”, among other things, continued to be “cotton fabrics” within the meaning of Entry 19 of the First

Schedule of the Central Excises and Salt Act, 1944, hereinafter referred to as the “Excises Act” and therefore, entitled to exemption from sales tax by virtue of the relevant rule of the Bengal Sales Tax Rules, 1941.

9. Reverting to **Delhi C. & G. Mills Co. Ltd**. (36 STC 575) (supra), it can be seen that what fell for consideration was Entry 19 of the First Schedule of the Excises Act which contains an inclusive definition of “cotton fabrics” meaning thereby all varieties of fabrics manufactured either wholly or partly from cotton, and including dhoties, sarees, chadars, bed-sheets, bed-spreads. . . . . The entry that fell for consideration in that case therefore, obviously, specifically included bed sheets and bed-spreads manufactured wholly or partly from cotton to fall within the term “cotten fabrics” for the purpose of that entry. In **M.M.Mohammed Abdul Khader**, [(1980) 46 STC 512], the Bench of this Court, in

considering the question whether mill-made kerchiefs are cotton fabrics within the scope of the aforesaid Entry 19 of the First Schedule, took the view that the process of stitching is essentially involved in the manufacture of several of the items enumerated in the inclusive portion of the definition of “cotton fabrics” as contained in Entry 19 of the First Schedule to the Excises Act and it is, therefore, not possible to accept the plea of the department that the fact that the edges of the kerchiefs have been stitched will take the article out of the scope of the entry “cotton fabrics”. The decision reported as **36 STC 575** (supra) was also relied on by this Court.

10. In **Radha's Fancy** (supra), this Court was again dealing with cotton fabrics referable to Entry 19 in the First Schedule of the Excises Act to determine the exigibility or otherwise under the KGST Act. In doing so, emphasis was laid on the fact that Entry 19 has also an inclusive clause in

the definition and therefore, resort to such a legislative device is by way of illustration or of enumeration of the forms, the thing defined commonly assumes, by naming things that clearly come within the meaning given. Profitable reference in this context was made to the decision of the Full Bench of this Court in **Krishnan Nair v. Sivaraman Nambudiri** (1967 KLT 78). The decision in Radha's Fancy, after copious reference to different materials, concluded by stating that the provisions speak for themselves.

11. Thus, it can be seen that the decisions which have been cited to construe whether “bed sheets” could be treated as “cloth woven on powerloom” for the purpose of Entry 10 in the Third Schedule are essentially decisions which deal with a different entry, namely, “cotton fabrics”, the claim and grant of exemption for which would depend upon their coverage under the different headings of the

Schedule to the Excises Act, which statute has, as already noticed, a specific definition for cotton fabrics which is essentially in the nature of a definition roping within it articles, by use of the legislative device “includes”. But the exemption claimed by the petitioner is not referable to any such entry. It is confined to Entry 10, in the Third Schedule to the KGST Act, which is “cloth woven on powerloom”. So much so, while noticing the law as laid in the decisions referred to above, their applicability to the facts of the case in hand and the statutory provisions arising for consideration are minimal.

12. Noticing **Porritts and Spencer (Asia) Ltd. v. State of Haryana** [(1978) 42 STC 433 (SC)] in which reference has been made to a long train of authorities in that line, the Apex Court reiterated in **Delhi C & G Mills Co. Ltd**. [(1980) 46 STC 256] (supra) as follows:

> "Now, in determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted. As sales tax the liability falls on the seller, who in his turn passes it on to the consumer. As purchase tax, the liability falls directly on the purchaser."

13. In the absence of any further statutory material in Entry 10 of the Third Schedule to understand the scope of "cloth woven on powerloom", the meaning or connotation of that expression must be construed in the sense in which it is understood in the trade, by the dealer and the

consumer. There could also be a look at the different other items in the Schedules to reach at the legislative intention. **The Chambers's Twentieth Century Dictionary** and **the Collins Cobuild English Dictionary** do not refer to a term "bed sheets". They refer to "bed covers". At Entry 108 under the First Schedule as it stood as on 31-12-1999, "bed sheets" are treated as an item of goods. Entry 6 in the Third Schedule, which provides exemption for certain goods made from handloom cloths, deals with bed covers. That entry reads as follows:

> "6. Bed covers, teapoy covers, towels, napkins made of handloom cloths."

14. Obviously, therefore, even in the legislative language used in Entry 6 in the Third Schedule, "bed cover" is an item of goods that is made of cloths. This means that bed covers on their making are treated as a separate entity for being considered as goods for the purpose of taxation

under the KGST Act. Though the petitioner chose to file this writ petition challenging the assessment orders raising the question of exemption as to bed sheets, no specific case on facts was placed before the assessing authority while it is stated that the goods are purchased by the petitioner as bed sheets from the manufacturer and are sold as bed sheets in singles and doubles. The declaration sought for by the petitioner is that the "bed sheets" dealt with by him are exempted from the levy of tax up to 3-4-1998. Applying the test noticed by the Apex Court in **Delhi C & G Mills Co. Ltd**. [(1980) 46 STC 256] (supra), a dealer and a consumer would, obviously, maintain a distinction between what they would call as "bed sheet" as distinct from "cloth woven on powerloom". The undisputed finding of the assessing authority is that bed sheets are sold as singles and doubles. Such products as bed sheets for single beds and double beds are articles of goods commonly called so and purchased for such use. Except in unusual situations, one

does not buy a bed sheet for any other purpose; to wear it or to make garments out of it. When “cloth woven on powerloom” is cut into pieces of particular sizes for the purpose of being used as bed sheets or bed-spreads and such pieces are held out to an intending consumer as articles that can be used as bed sheets and the consumer intends to buy them for such user, it obviously results in the requirement to treat those articles of goods as goods distinct from what an intending consumer and offering dealer would, in the common course of trade, call merely as “cloth”. It cannot be continued to be treated as “cloth woven on powerloom” but as a separate entity named “bed sheets”.

15. No contrary factual disputes having been raised by the petitioner before the statutory authorities by taking recourse to appellate remedies against the assessment orders, treating it as a question of law being urged in writ jurisdiction, the conclusion is inescapable that the statutory authorities cannot be found fault with, either on counts of

legal infirmity or jurisdictional error in having concluded that “bed sheets” dealt with by the petitioner are not “cloth woven on powerloom”, for the purpose of Entry 10 in the Third Schedule to the KGST Act.

For the aforesaid reasons, the writ petition fails. The same is accordingly dismissed. No costs.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.

“C.R.”

THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 27th July, 2007.